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ALEXANDER L. STEVAS,
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No. 84-1892

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ADELINA F. CICIRELLO,

Petitioner,

—against—

NEW YORK TELEPHONE CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS TO THE SECOND CIRCUIT

MEMORANDUM FOR NEW YORK TELEPHONE COMPANY IN OPPOSITION

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Statement Pursuant to Rule 28.1

New York Telephone Company ("NYT") is a wholly-owned subsidiary of NYNEX Corporation ("NYNEX"), which has outstanding securities in the hands of the public. NYT has no subsidiaries or affiliates other than corporations that are wholly owned by NYNEX either directly or indirectly.

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The petition for a writ of certiorari should be denied because (1) there is no conflict among the circuits, as Petitioner alleges, (2) the questions of "constructive discharge" and "involuntary retirement" do not raise issues justifying review by this Court, and (3) the petition raises no important questions of federal law having widespread ramifications.

1. In claiming a conflict between the decision below and *Romero v. Union Pacific R.R.*, 615 F.2d 1303 (10th Cir. 1980), Petitioner totally misperceives the nature of the decision below. The dismissal of Petitioner's claim was not based on any finding regarding Respondent's "intent and motive," or on any finding that Respondent did not retaliate against Petitioner. Indeed, the two rulings in this case—that Petitioner was not in fact demoted and that she could not pursue her claim because it has become moot—required no finding on the question of retaliation. Rather, the plain significance of the mootness

finding is that because (1) Petitioner's claims of harassment were not susceptible of a back pay remedy (*DuVall v. Postmaster General*, 585 F.Supp. 1374, 1377 (D.D.C. 1984)), (2) because compensatory damages are not available under Title VII (*Great American Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 374-75 (1979)), and (3) because the injunctive relief normally available to remedy proven claims of harassment would be inappropriate in view of the lack of a continuing employment relationship (*Backus v. Baptist Medical Center*, 671 F.2d 1100 (8th Cir. 1982); *DuVall v. Postmaster General*, *supra*; *Gillead v. Defense Supply Agency*, 11 FEP Cases 1180 (S.D.N.Y.), *aff'd mem.*, 22 FEP Cases 840 (2d Cir. 1975)), Petitioner may not pursue her claim even if Respondent committed acts of retaliation. Petitioner's position makes no more sense than if she argued that *Romero* would conflict with a decision granting summary judgment in a retaliation action on the ground that the action was commenced after the statute of limitations had run.

2. Petitioner's invocation of the concepts of "constructive discharge" and "involuntary retirement" do not raise issues justifying review by this Court. A review of Petitioner's own characterization of her complaint (Pet., p. 7) as well as the opinion of the District Court (Pet., A4-A19) shows that the allegation of constructive discharge was not made below. And while Petitioner did argue below, in substance, that she had been involuntarily retired, the District Court properly ruled (a) that the contention was irrelevant to the issue of mootness, and (b) that Respondent was "entirely justified in retiring Cicirello" in conformity with its "routine and uniform policy" in similar situations, and particularly in light of Petitioner's failure to propose any viable alternative. (Pet., A17-A18)

3. Despite Petitioner's exaggerated attempts to invest this case with global ramifications—such as her vacuous references to "constitutional import" (Pet., p. 14) and "a universal method of frustrating all retaliation actions" (Pet., p. 15)—it is

simply an individual action, based on a narrow and unusual set of facts, that raises no important question of federal law requiring the time and effort of this Court to decide.

Therefore, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: July 1, 1985